



James W. Perkins
(212) 801-3188
perkinsj@gtlaw.com

September 4, 2024

VIA ECF

Hon. Cheryl L. Pollak
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East, Room 1230
Brooklyn, NY 11201

Re: *American Transit Insurance Co. v. Pierre et al.*, 1:24-cv-00360-RPK-CLP

Dear Magistrate Judge Pollak:

We are counsel to American Transit Insurance Company (“ATIC”), the Plaintiff in the above-captioned matter. We write pursuant to the Court’s Individual Practice Rules to seek clarification on the timing of the submission of ATIC’s fee application that the Court recommended in its Report and Recommendation dated August 27, 2024 (“R&R”, ECF No. 77). Specifically, in the Conclusion of the R&R, the Court stated in part: “the Court respectfully recommends that the District Court: . . . (4) order plaintiff to submit accounting records supporting his request for attorney’s fees and costs.” (*Id.* at 16.) The Court then instructs the parties that any objections are to be filed with the Clerk of the Court within 14 days of the parties’ receipt of the R&R, *i.e.*, by September 10, 2024. (*Id.*) Separately, the Docket Text corresponding to ECF No. 77 states in part: “The Court further recommends that the district court order Pierre to pay a reasonable portion of plaintiff’s attorney’s fees in an amount to be determined by the Court at a later date, and order plaintiff to submit accounting records supporting its request for attorney’s fees and costs by 09/10/2024.” Although the R&R contemplates submission of ATIC’s fee application following a District Court order, according to the Docket Text the fee application would be due on the same day as any objections to the R&R are due, and before the District Court has entered an order confirming or modifying the R&R.

Mindful that fee applications involve attorney and paralegal work, and that the cost of such work is potentially recoverable as part of the fee award (*see Carrington v. Graden*, No. 18 CIV. 4609 (KPF), 2020 WL 5758916, at *11 (S.D.N.Y. Sept. 28, 2020) (awarding recovery of fees and costs incurred in drafting and submitting fee petitions)), ATIC seeks clarification on whether it should submit a fee application on 9/10/24, or after the District Court has considered any objections and entered a final order. *See Falvey Cargo Underwriting Ltd. v. Zim Integrated Shipping Servs. Ltd.*, No. 119CV11495LTSSDA, 2024 WL 553962, at *1 (S.D.N.Y. Jan. 10, 2024) (noting that “a Report and Recommendation is not a final order and is non-binding”).

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Thank you for the Court's consideration of this request and further direction concerning the fee application.

Respectfully submitted,



James W. Perkins

cc: All Counsel of Record (via ECF)